

**REMARKS**

This amendment is responsive to the Office Action dated October 22, 2002. Claims 1-20 are pending in the application and are subject to rejection.

For the convenience of the Examiner, all of the claims are fully set forth hereinafter on the attached page captioned "**VERSION WITH MARKINGS TO SHOW CHANGES MADE**" and the amended claims are noted as such and marked up to indicate the amendments thereto.

This amendment is being filed within four months from the mailing date of the Office Action and a petition for an extension of time is filed herewith along with the appropriate fee in a credit card payment form.

**I. Claim Rejections – 35 USC §102**

The Office Action rejected **Claims 1-8, 10, 11, 13 and 19** under 35 USC 102(b) as being anticipated by U.S. Pat. No. 3,000,145 to Fine ("Fine"). Applicant respectfully traverses the rejections and asserts that Claims 1-8, 10, 11, 13 and 19 are novel and patentable in view of the amendments and remarks set forth herein.

It is well settled that an anticipatory reference must teach each and every one of the limitations of the claim(s) alleged to be anticipated thereby. Applicant respectfully asserts that Fine fails to teach all of the limitations of Applicant's invention as claimed.

Regarding **Claims 1 and 19**, as amended, specifically requires the first member to be formed from unitary construction. Fine fails to teach the subject limitation or to contemplate the same because Fine's truss anchor has a separate anchor member 30 which cannot be formed from

one unitary piece of material. Accordingly, Fine fails to teach all of the limitations of Applicant's Claims 1 and 19 as claimed and can neither anticipate nor render obvious Applicant's Claim 1 and 19.

Claim 2 specifically refers to a second extended region whereas Fine teaches a single ear 20. The Office Action applies the same numeral reference in an attempt to teach Applicant's first and second extended regions. Furthermore, Claim 2 incorporates the novel limitations of Claim 1, which Fine fails to teach. Accordingly, Fine neither anticipates nor renders obvious Applicant's Claim 2.

**Claims 3 and 4** depend from Claim 1, via claim 2, and each claim incorporates the novel and unobvious limitations thereof which are neither taught by nor contemplated by Fine.

**Claim 5 and 6** depend from Claim 1, via other dependent claims, and each claim incorporates the novel and unobvious limitations thereof which are neither taught by nor contemplated by Fine.

**Claim 7** depends from Claim 1, via other dependent claims, and incorporates the novel and unobvious limitations thereof which are neither taught by nor contemplated by Fine.

**Claim 8** depend from Claim 1, via other dependent claims, and incorporates the novel and unobvious limitations thereof which are neither taught by nor contemplated by Fine.

**Claim 10**, as amended, specifically requires the second member to be formed from unitary construction. Fine fails to teach the subject limitation or to contemplate the same because Fine's truss anchor has a separate anchor member 30 which cannot be formed from one unitary piece of material. Accordingly, Fine fails to teach all of the limitations of Applicant's Claim 10 as claimed, and can neither anticipate nor render obvious the same.

**Claim 11** depends from Claim 10 and incorporates the novel and unobvious limitations thereof, which limitations are neither taught by nor contemplated by Fine.

**Claim 13** depends from Claim 10, via other dependent claims, and incorporates the novel and unobvious limitations thereof, which limitations are neither taught by nor contemplated by Fine.

Therefore, for at least the aforementioned reasons, because Fine fails to disclose all of the limitations of Applicant's invention as claimed, Applicant respectfully requests withdrawal of the rejection of Claims 1-8, 10, 11, 13, and 19 thereunder.

#### **IV. Claim Rejections – 35 USC §103(a)**

The Office Action rejected **Claims 9** under §103(a) as being unpatentable over Fine and US Pat. No. 3,188,696 to Earhart ("Earhart"). Applicant respectfully traverses the rejection, combination, modification and interpretation of the references.

First, it is well settled that in order for a modification or combination of the prior art to be valid, the prior art itself must suggest the modification or combination. Neither Fine nor Earhart suggests a reason to modify or combine the references as proposed. Each reference is individually complete and functional independently for its limited specific purpose and there would be no reason to make the modification and combination proposed by the Office Action in order to rend Claims 9 obvious. Moreover, the portion of Fine and Earhart cited in the Office Action provides no suggestion, motivation, or teaching of Applicant's invention as claimed. In fact, Fine teaches away from the combination of an anchor plate as taught by Earhart, "It is

therefore the main purpose of the present invention to provide a truss anchor device of the character described which eliminates beam plates..." (Column 1, lines 29-31)

Secondly, even if the modification was legally justified, it still would not render Applicant's invention obvious. Applicant's invention teaches the use of a device to firmly secure a truss to the building's walls during high wind storms. Earhart teaches a device for securing beams to a floor and floor plate and does not address the securing of the roof to the walls of a building as claimed by Applicant. (Column 2, lines 18-34)

Thirdly, the Office Action is improperly using "hindsight" and the teachings of Applicant's claimed invention in order to combine references to render Applicant's claims obvious. The Office Action admits that Fine fails to teach Applicant's first and second regions which hold fasteners that are secured in the concrete wall. However, the Office Action improperly attempts to modify and combine Earhart, which also fails to teach all of the limitations of Applicant's invention and in fact teaches away from Applicant's invention, with Fine in an attempt to achieve Applicant's invention. Earhart does not teach or contemplate the nails being secured to concrete. In fact, there is no mention of concrete anywhere in Earhart. It is understood to someone in the field that concrete is not penetrable by a nail. Furthermore, a nail would not be able to maintain the roof of a building secured to its walls in a steadfast manner as claimed by Applicant.

Fourthly, the Office Action seems to recognize the advantages of the present invention by trying to make modifications in Fine and Earhart in an attempt to meet the advantages of

Applicant's invention. Applicant respectfully submits that the fact the modification produces advantages taught by Applicant militates in favor of Applicant because it proves that the combination produces new and unexpected results and hence is unobvious.

Finally, if Applicant's invention were in fact obvious, those skilled in the art would have combined Fine (issued in 1961) and Earhart (issued in 1965) by now to implement the advantages of Applicant's invention. The fact that the two references have not been modified or combined to implement Applicant's invention, despite its admitted advantages, indicates that Applicant's invention is not obvious.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claim 9 under Fine in view of Earhart for at least the aforementioned reasons.

The Office Action rejected Claims 12, 14, and 20 under §103(a) as being unpatentable over Fine and in view of Official Notice. Applicant respectfully traverses the rejection, modification and interpretation of the reference.

First, it is well settled that in order for a modification or combination of the prior art to be valid, the prior art itself must suggest the modification or combination. Fine fails to suggest a reason to modify the reference as proposed in the Office Action. Fine is complete and functional independently for its limited specific purpose and there would be no reason to make the modification proposed by the Office Action in an attempt to render Claims 12, 14 and 20 obvious. Moreover, the portion of Fine cited in the Office Action provides no suggestion, motivation, or teaching of Applicant's invention as claimed.

Secondly, even if the modification was legally justified, it still would not render Applicant's invention obvious. Applicant claims the use of a device having opposing attachment points to secure a beam therein and anchoring bolts that are not of unitary construction with the attachment points. Alternatively, Fine teaches that the strap 30 itself is the anchoring mechanism.

Thirdly, the Office Action is improperly using "hindsight" and the teachings of Applicant's claimed invention in order to modify Fine in an attempt to render Applicant's claims obvious. The Office Action admits that Fine fails to teach Applicant's opposing regions that attach to the beam. In addition, Applicant's anchoring means do not also serve as the attachment points as taught by Fine. However, the Office Action improperly attempts to modify Fine in an attempt to achieve Applicant's invention. Fine does not teach or contemplate opposing attachment points 40. In fact, because of the bent region 40 that extends over the truss, an opposing region 40 would not be possible.

Fourthly, the Office Action seems to recognize the advantages of the present invention by trying to make modifications in Fine in an attempt to meet the advantages of Applicant's invention. Applicant respectfully submits that the fact the modification produces advantages taught by Applicant militates in favor of Applicant because it proves that the combination produces new and unexpected results and hence is unobvious.

Finally, if Applicant's invention were in fact obvious, those skilled in the art would have modified Fine (issued in 1961) by now to implement the advantages of Applicant's invention. The fact that Fine has not been modified to implement Applicant's invention, despite its admitted advantages, indicates that Applicant's invention is not obvious. Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 12, 14, 20 under Fine in view of

Earhart for at least the aforementioned reasons.

The Office Action rejected **Claims 15, 16, 17 and 18** under §103(a) as being unpatentable over Fine and in view of Official Notice. Applicant respectfully traverses the rejection, modification and interpretation of the reference.

With respect to Claim 15, Fine fails to disclose more than one affixing means securing the plate to the concrete. Applicant's invention clearly allows the same. Furthermore, Claim 15 depends from novel and unobvious independent claim 10, via intervening dependent claims, and incorporates the limitations thereof. Accordingly, Claim 15 is not rendered obvious by Fine.

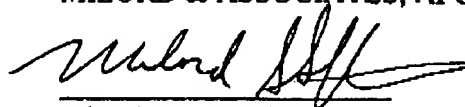
With respect to Claims 16, 17, and 18, each respective claim depends from novel and unobvious independent claim 10, via intervening dependent claims, and incorporates the limitations thereof. Accordingly, Claims 16, 17, and 18 are not rendered obvious by Fine.

#### CONCLUSION

It is respectfully submitted that the case is now in condition for allowance, and an early notification of the same is requested. If it is believed that a telephone interview will help further the prosecution of this case, Applicant respectfully requests that the undersigned attorney be contacted at the listed telephone number.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE:**

1. (Once Amended) A tie-down device, comprising  
a first member of unitary construction having a bottom panel;  
a first extended region emanating from said bottom panel;  
an affixing means for attaching said bottom panel to a member received on said bottom panel; and  
an anchoring means for affixing said first extended region to a structure in a steadfast manner.
2. The device of Claim 1, wherein a second extended region emanates from said bottom panel in a direction opposing said first extended region, and a second anchoring means affixing said second extended region to a structure in a steadfast manner.
3. The device of Claim 2, wherein a first panel emanates from said bottom panel in a substantially perpendicular fashion therefrom; said first panel receiving said affixing means therethrough, thereby affixing said first panel to said member in a secure manner.
4. The device of Claim 2, wherein a first panel emanates from said bottom panel in a substantially perpendicular fashion therefrom, and a second panel emanates from said bottom panel in opposing relation to said first panel such that a guide is created therebetween for receiving said member, and at least one of said affixing means attaches said first panel to a first face of said member and at least one of said affixing means attaches said second panel to a second face of said member.

5. The device of Claim 4, wherein said member is a wood beam.
6. The device of Claim 4, wherein said member is selected from a group consisting of a truss and a gable end truss.
7. The device of Claim 4, wherein said affixing means is selected from a group consisting of a nail, a threaded element, a nut and bolt apparatus.
8. The device of Claim 4, wherein said first member is constructed of metal.
9. The device of Claim 4, wherein said structure is a preform wall containing a curable material, said anchoring means passing through an aperture in each of said first and second extended regions and being received and bound within said curable material.
10. (Once Amended) A tie-down system, comprising:
  - a second member constructed from a unitary piece of material having a bottom plate;
  - an extended section emanating from said bottom plate in a substantially similar plane;
  - an affixing means for attaching said second member to a member resting on said bottom plate; and
  - an anchoring means for affixing said first extended section to a structure in a steadfast manner.

11. The system of Claim 10, wherein a first sheet extends in a vertical direction from a first border of said extended section, and a third sheet extends from said first sheet in a perpendicular fashion, said affixing means attaching said third sheet to said member in a secure manner.

12. The system of Claim 10, further comprising:

a first sheet extends in a vertical direction from a first border of said extended section and a second sheet extends in a vertical direction from a second border of said extended section;

a third sheet extending from said first sheet in a perpendicular fashion, said affixing means attaching said third sheet to said member in a secure manner;

a fourth sheet extending from said second sheet in a perpendicular fashion, said affixing means attaching said fourth sheet to said member in a secure manner.

13. The system of Claim 11, wherein at least a hole is defined by said extended section and receives an elongated portion of said anchoring means therethrough and anchors said second member to said structure in a steadfast manner.

14. The system of Claim 12, wherein at least a first plate emanates from said bottom plate in a vertical direction and is distal to said extended section such that a first channel is defined by said first plate, said bottom plate, said third sheet and said fourth sheet, and said member being received within said channel.

15. The system of claim 14, wherein said first plate is connected to said first member by

at least one of said affixing means.

16. The system of claim 14, wherein said structure is a preform wall containing a curable material, said anchoring means passing through said hole is received and bound within said curable material.

17. The system of claim 14, wherein said second member is constructed of a metal.

18. The system of claim 14, wherein said member is selected from a group consisting of a truss and a gable end truss.

19. (Once Amended) A method for attaching trusses to a preform wall structure having an outer wall and an inner wall wherein a curable material is poured therebetween, the method comprising:

- providing a first member of unitary construction having a bottom panel;
- providing a first extended region from said bottom panel;
- providing a first panel attached to said bottom panel;
- placing said truss upon said bottom panel;
- attaching said first panel to said truss with an affixing means;
- anchoring said first extended region to said curable material with an anchoring means.

20. The method of claim 19, further comprising the steps of:

- defining an aperture within said extended region;

inserting an elongated portion of said anchoring means through said aperture and into said curable material;

engaging a head portion of said anchoring means upon said extended region.